



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912**

**Certified Mail
Return Receipt Required**

MAY 15 2014

Mr. Carl Erickson
Erickson Fuel Company, Inc.
600 Boston Avenue
Medford, MA 02155

Re: Request for Information, Docket No. 10-308-015, for January 6, 2014, Oil Spill into Winter Brook.

Dear Mr. Erickson:

Our records show that Erickson Fuel Company, Inc. located at 600 Boston Avenue, Medford, Massachusetts (the "Facility"), was inspected by a representative of the U.S. Environmental Protection Agency ("EPA") on March 24, 2014. The inspection was conducted as a result of a January 6, 2014, oil spill from the Facility into Winter Brook, a tributary of the Mystic River.

Based on information provided at that the time of EPA's March 24, 2014, inspection, the Facility did not have a Spill Prevention, Control, and Countermeasure ("SPCC") Plan. An SPCC Plan is required by the Oil Pollution Prevention Regulations at 40 C.F.R. Part 112, promulgated under Section 311 of the Clean Water Act, 33 U.S.C. § 1321, for facilities having capacity to store more than 1,320 gallons of oil and having reasonable potential to spill oil to surface waters.

On April 21, 2014, EPA received a letter from the Facility requesting an extension of time to complete a SPCC Plan. EPA is in receipt of your letter and is requesting you answer the following questions, read the enclosed information and (if needed) develop an SPCC Plan as part of responding to this Request for Information ("Request").

Under the authority of Sections 308 and 311(m) of the Clean Water Act, 33 U.S.C. §§ 1318 and 1321(m), you are hereby required to submit to EPA the following information to EPA within 30 calendar days of your receipt of this letter.

1. If you have determined that your Facility is no longer subject to the Oil Pollution Prevention Regulations at 40 C.F.R. Part 112, and is therefore not required to have an SPCC Plan, provide a detailed explanation supporting such determination, including appropriate documentation.

Please note that if your Facility has an aboveground oil storage capacity of 10,000 gallons or less and meets the oil discharge history criteria as described in 40 C.F.R.

§ 112.3(g), you are no longer required to obtain professional engineer certification of the SPCC Plan. Instead, you may self-certify your Facility's SPCC Plan consistent with the requirements of 40 C.F.R. § 112.6. If you choose to self-certify, in addition to providing EPA with the self-certified SPCC Plan, provide an explanation (with documentation) supporting the determination that your Facility is a "qualified facility" as defined in 40 C.F.R. § 112.3(g).

The following additional information shall also be provided within 30 calendar days of your receipt of this letter:

2. A list of all the oil storage capacity at the Facility, both underground and aboveground (including, tanks, drums, transformers, oil-filled systems, and parked mobile refuelers, etc.) and the type of oil stored in each container. Indicate each container's age and method of construction (e.g., single or double wall, welded or riveted, steel or fiberglass). Also indicate whether any secondary containment is provided around each container, and, if so, its method of construction (earth berm, steel wall, concrete block wall, poured concrete wall) and the total volume it can contain. Under 40 C.F.R. § 112.2, "oil" is defined as oil of any kind or in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil. Please note that a building may be used for secondary containment if the building has been specifically designed and constructed for such application. If you are using a building to achieve secondary containment for oil storage submit such supporting documentation.
3. The date the Facility first started having the capacity to store oil above the SPCC regulatory thresholds set forth in 40 C.F.R. § 112.1(d)(1) (i.e., the SPCC-regulated underground oil storage capacity of the Facility is greater than 42,000 gallons -or- the aboveground oil storage capacity of the Facility is greater than 1,320 gallons).
4. The date the Facility first began operation and, if different, the date the current owner took over ownership of the Facility. If the Facility is operated by an entity other than the owner, also include the date the current operator took over operation of the Facility.
5. For the Facility, specify the full legal name(s) with exact spelling, owner(s) and operator(s) full name, the business' mailing address, and telephone number. Also, (if applicable) a list of additional facilities owned and or operated by the owner of the Facility, including the name, address, and total number of employees at each of the other facilities. If the other facilities are operated by an entity other than the owner of this Facility, provide a list of additional facilities, including the name, location, and total number of employees. For each additional facility listed, also provide the following information:
 - a. Provide the aggregate shell capacity of all above ground oil tanks and containers equal to or greater than 55 gallons in size at each facility.
 - b. Explain whether each additional facility is subject to the Oil Pollution Prevention Regulations (40 C.F.R. Part 112).
 - c. For those facilities that are subject to the Oil Pollution Prevention regulations indicate whether the facility has a written, Professional Engineer-certified SPCC Plan or a

written, self-certified SPCC Plan, and whether the SPCC Plan is being fully implemented at the facility; and

- d. For facilities that are required to have an SPCC Plan but either do not have one or are not fully implementing their SPCC Plan, provide a time frame for when each facility is expected to be in compliance with the Oil Pollution Prevention Regulations.
6. If the Facility is developing an updated SPCC Plan post-inspection, include the following information:
 - a. The cost of preparing the SPCC Plan;
 - b. The estimated cost of implementing the SPCC Plan (including the cost of constructing additional secondary containment at the Facility); and
 - c. The ongoing annual costs of implementing the SPCC Plan (including training, inspections and record keeping).
 7. Provide a detailed description and explanation of the January 6, 2014, oil spill into Winter Brook from the Facility, including:
 - a. The date and time the spill occurred, the date and time the spill was discovered, and the date and time the spill was reported to the National Response Center and any other appropriate federal, state and/or local agencies (e.g., EPA, state environmental agency, fire department). Include the name and phone number of the agency personnel contacted.
 - b. The name of each body of water if the spilled material entered one or more bodies of water, or their adjoining shorelines.
 - c. Describe the quantity (in gallons) of oil spilled from the mobile refueler. Also, the quantity (in gallons) that entered into the stormwater sewer system, and the quantity (in gallons) that flowed to the water body and or adjoining shoreline. Identify the grade of oil (e.g., on-road diesel, off-road diesel, number 2 home heating, kerosene) spilled.
 - d. Describe the pathway the spilled oil traveled, starting from the original spill point (e.g., the mobile refueler in which the material was stored) to the nearest distant surface water body into which it flowed (e.g., Winter Brook or Mystic River).
 - e. Describe the size of the tank from which the oil spilled, the tank's type of inventory gauge (e.g., sight glass, dip stick, float gauge, or analog or digital display), the size and type of other tanks involved in the spill event, and the amount of oil in the tanks involved in the incident before the spill began.
 - f. Describe the extent to which the discharge caused a film or sheen on the surface of the water(s) and/or caused a sludge or emulsion to be deposited on the water body bottom or on adjoining shoreline soils or vegetation.

- g. Describe any environmental damage resulting from the spill, such as fish kills, dead waterfowl or animals, stained or dead vegetation, stained soil, etc.
 - h. Describe any damage to public or private property, such as road surfaces, stormwater sewer system, catch basins, bridge abutments, dams, beaches, boat hulls, wells, etc.
 - i. Provide a summary of events immediately preceding the spill event, including the exact cause of the spill. EPA was informed during the inspection that an auxiliary flange located on the underside of the mobile refueler failed. Provide a picture of the flange, or similar, and a picture or drawing showing the location of the flange on the truck. Also, from January 2011 to the present regarding the flange and or the trucks oil off-loading system (pumps, piping, hoses, dispenser, valves, flanges, etc.) provide all service, maintenance and inspection records.
 - j. Describe all actions taken to control and/or remove the spilled oil from the stormwater sewer's collection system, environment, or to mitigate its effects on the environment. Include a summary of the costs of such actions. Provide copies of all clean-up contractor invoices and manifests.
 - k. Describe all measures taken after the oil spill event to prevent a recurrence, including the costs of such measures.
 - l. Provide the names, titles, addresses and phone numbers of employees and officials you believe to have knowledge of the facts surrounding the spill event.
 - m. Provide copies of any investigative reports completed by state environmental agencies, state or local police, fire departments, insurance companies, etc.
8. Provide a history of oil spill events at the Facility, or any other Facility owned by the company, within the last five years (from the date of the spill in question). Explain the circumstances of each spill, the quantity of oil spilled, whether the oil reached any bodies of water and, if so, the names of such water bodies, and the quantity of oil entering such water bodies.

Answers to the above set of questions shall be sent to:

Joseph Canzano, P.E.
Region I Oil Spill Prevention Compliance Coordinator
U.S. Environmental Protection Agency, Region 1
5 Post Office Sq., Suite 100
Mail Code OES04-4
Boston, MA 02109-3912

Please be advised that noncompliance with the Oil Pollution Prevention Regulations constitutes a violation of the Clean Water Act for which both injunctive relief and penalties can be sought.

EPA reserves its right to take further enforcement action pursuant to the Clean Water Act, and other applicable laws, including the right to seek penalties, for any violations detected at

the above-referenced inspection. Although preparation and/or revision and submittal of an SPCC Plan to EPA does not preclude EPA from seeking penalties for violations of the Clean Water Act, your prompt response towards coming into full compliance with the Oil Pollution Prevention Regulations will be taken into account in determining EPA's enforcement response.

Please be further advised that compliance with this information request is mandatory. Failure to respond fully and truthfully, or to adequately justify any failure to respond, within the time frame specified above, also constitutes a violation of the Clean Water Act subject to enforcement action, including the assessment of civil penalties. In addition, providing false, fictitious, or fraudulent statements or representations may subject you to criminal prosecution under 18 U.S.C. § 1001. If information or documents not known or available to you as of the date of submission of your response to this request should later become known or available to you, you must supplement your response to EPA. Moreover, should you find at any time after the submission of the response that any portion of the submitted information is false or misrepresents the truth, you must notify EPA of this fact as soon as possible, and provide a corrected response.

Although this letter's emphasis is on compliance with the Oil Pollution Prevention Regulations, your facility may also be subject to reporting requirements under the Emergency Planning and Community Right-to-Know Act ("EPCRA"). Under Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20 and 370.25, any facility that is required to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical (which includes petroleum) under the Occupational Safety and Health Act of 1970 ("OSHA") and regulations promulgated thereunder, and which stores chemicals in amounts greater than specified threshold quantities, must prepare and submit an emergency and hazardous chemical inventory form (Tier I or Tier II form) to the Local Emergency Planning Committee ("LEPC"), the State Emergency Response Commission ("SERC") and the local fire department. The Tier I or Tier II form must be submitted annually on or before March 1 and is required to contain information reflecting the preceding calendar year. A failure to file such form may subject the facility to additional penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), which authorizes EPA to assess a civil penalty of up to \$37,500 per day of violation. EPA does not waive its right to take additional enforcement action for any violation of EPCRA or of any other federal statute or regulations.

You may, if you desire, assert a business confidentiality claim covering part or all of the information requested in the manner described by 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, the information may be made available to the public without further notice to you.

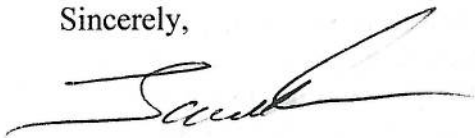
Enclosed with this Request is an information sheet intended to assist small businesses, as defined by the Small Business Administration ("SBA") at 13 C.F.R. § 121.201, in understanding and complying with environmental regulations. EPA New England is routinely providing this information to businesses in the course of its enforcement activities, whether or not they are small businesses as defined by the SBA. The Small Business Regulatory Enforcement and Fairness Act ("SBREFA") provides small businesses with the opportunity to submit comments on regulatory enforcement at the time of an agency enforcement activity. The enclosed Information Sheet provides information on this right, as well as information on compliance

assistance that may be available to you. The Small Business Ombudsman may be reached at 1-800-368-5888. Please be aware that availing yourself of this opportunity does not relieve you of its responsibility to comply with federal law and this information request. In addition, EPA is including with Request a fact sheet addressing operator's requirements for mobile refuelers, and a copy of a letter to the Petroleum Marketers Association of America from EPA regarding EPA's regulator position on cargo tank motor vehicles that contain oil overnight.

Your response to this Request must be accompanied by the certificate that is signed and dated by the person who is authorized to respond to the Request on behalf of the company. The certification must state that your response is complete and contains all information and documentation available to you that is responsive to the Request. A Statement of Certification is enclosed with this letter.

If you have any questions concerning your compliance with this letter, please contact Joseph Canzano the Region I Spill Prevention Compliance Coordinator, directly at (617) 918-1763, or have your attorney contact Jeffrey Kopf, EPA's attorney in this matter, at (617) 918-1796. For your information, EPA has on its website (www.epa.gov/oilspill) a general guidance document on SPCC Plan preparation, including a model SPCC Plan.

Sincerely,



James Chow, Manager
Technical Enforcement Office
Office of Environmental Stewardship

Enclosure

cc: Barry P. Fogel, Keegan Werlin LLP
Tom Wigglesworth, Ambrose Environmental Management, Inc.

Statement of Certification

for

**Erickson Fuel Company, Inc.
600 Boston Avenue
Medford, MA 02155**

To be returned with Response to Information Request

I declare under penalty of perjury that I am authorized to respond on behalf of Erickson Fuel Company, Inc. I certify that the foregoing responses and information submitted were prepared under my direction or supervision and that I have personal knowledge of all matters set forth in the responses and the accompanying information. I certify that the responses are true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

By _____
(Signature)

(Print Name)

(Title)

(Date)

Hotlines, Helplines & Clearinghouses

(www.epa.gov/epahome/hotline.htm)

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. A few examples are listed below:

Clean Air Technology Center

(www.epa.gov/ttn/catc or 1-919-541-0800)

Emergency Planning and Community Right-To-Know Act

(www.epa.gov/superfund/resources/infocenter/epcra.htm or 1-800-424-9346)

EPA's Small Business Ombudsman Hotline provides regulatory and technical assistance information.
(www.epa.gov/sbo or 1-800-368-5888)

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers
(www.epa.gov/clearinghouse)

National Response Center to report oil and hazardous substance spills.

(www.nrc.uscg.mil or 1-800-424-8802)

Pollution Prevention Information Clearinghouse

(www.epa.gov/opptintr/ppic or 1-202-566-0799)

Safe Drinking Water Hotline

(www.epa.gov/safewater/hotline/index.html or 1-800-426-4791)

Stratospheric Ozone Refrigerants Information

(www.epa.gov/ozone or 1-800-296-1996)

Toxics Assistance Information Service also includes asbestos inquiries.

(1-202-554-1404)

Wetlands Helpline

(www.epa.gov/owow/wetlands/wetline.html or 1-800-832-7828)

State Agencies

Many state agencies have established compliance assistance programs that provide on-site and other types of assistance. Contact your local state environmental agency for more information or the following two resources:

EPA's Small Business Ombudsman

(www.epa.gov/sbo or 1-800-368-5888)

Small Business Environmental Homepage

(www.smallbiz-enviroweb.org or 1-724-452-4722)

Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated,

businesses may be eligible for penalty waivers or reductions. EPA has two policies that potentially apply to small businesses:

The Small Business Compliance Policy

(www.epa.gov/compliance/incentives/smallbusiness)

Audit Policy

(www.epa.gov/compliance/incentives/auditing)

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established an SBA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System (NAICS) designation, number of employees, or annual receipts, defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit comments to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.



Office of Enforcement and Compliance Assurance
INFORMATION SHEET

U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance resources such as workshops, training sessions, hotlines, websites, and guides to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance, and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Compliance Assistance Centers

(www.assistancecenters.net)

In partnership with industry, universities, and other federal and state agencies, EPA has established Compliance Assistance Centers that provide information targeted to industries with many small businesses.

Agriculture

(www.epa.gov/agriculture or 1-888-663-2155)

Automotive Recycling Industry

(www.ecarcenter.org)

Automotive Service and Repair

(www.ccar-greenlink.org or 1-888-GRN-LINK)

Chemical Industry

(www.chemalliance.org)

Construction Industry

(www.cicacenter.org or 1-734-995-4911)

Education

(www.campuserc.org)

Healthcare Industry

(www.hercenter.org or 1-734-995-4911)

Metal Finishing

(www.nmfrc.org or 1-734-995-4911)

Paints and Coatings

(www.paintcenter.org or 1-734-995-4911)

Printed Wiring Board Manufacturing

(www.pwbrc.org or 1-734-995-4911)

Printing

(www.pneac.org or 1-888-USPNEAC)

Transportation Industry

(www.transource.org)

Tribal Governments and Indian Country

(www.epa.gov/tribal/compliance or 202-564-2516)

US Border Environmental Issues

(www.bordercenter.org or 1-734-995-4911)

The Centers also provide State Resource Locators

(www.envcap.org/statetools/index.cfm) for a wide range of topics to help you find important environmental compliance information specific to your state.

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page

www.epa.gov

Small Business Gateway

www.epa.gov/smallbusiness

Compliance Assistance Home Page

www.epa.gov/compliance/assistance

Office of Enforcement and Compliance Assurance

www.epa.gov/compliance

Voluntary Partnership Programs

www.epa.gov/partners





Spill Prevention, Control, and Countermeasure (SPCC) Rule Amendments

Streamlined Requirements for Mobile Refuelers

EPA-550-F-06-007

December 2006

In December 2006, EPA amended the Spill Prevention, Control, and Countermeasure (SPCC) rule to streamline some of the requirements for facilities with smaller oil storage capacity and specific types of equipment, including those for sized secondary containment for mobile refuelers. Owners and operators of mobile refuelers at a non-transportation-related facility will no longer need to provide sized secondary containment systems, which are systems large enough to contain the capacity of the largest single compartment or container on a mobile refueler along with enough room to contain precipitation. Providing sized secondary containment for vehicles that move frequently within a facility to perform refueling operations can raise safety and security concerns. However, the SPCC rule's general secondary containment requirements still apply to mobile refuelers, as well as containment requirements associated with oil transfers.

What is a mobile refueler?

A mobile refueler is a bulk storage container onboard a vehicle or being towed that is designed or used solely to store and transport fuel for transfer into or from an aircraft, motor vehicle, locomotive, vessel, ground service equipment, or other oil storage container.

Mobile refuelers may be found at the following non-transportation-related locations: industrial sites, airports, military bases, construction sites, chemical complexes, mining sites, seaport terminals, and tank truck home bases.

How do the new changes apply to mobile refuelers?

Mobile refuelers are now exempt from the following sized secondary containment provisions that still apply to all other bulk storage containers and mobile/portable bulk storage containers:

- Sections 112.8(c)(2) and (11) for petroleum oils
- Sections 112.12(c)(2) and (11) for animal fats and vegetable oils

These provisions previously required sized secondary containment for mobile refuelers, such as a dike or catchment basin, of sufficient size to contain the capacity of the largest compartment or container on a mobile refueler along with enough room to contain precipitation.

The exemption does not apply to refuelers used primarily for the bulk storage of oil in a fixed location in place of stationary containers (e.g., a refueler that no longer can move or conduct transfers and is left only to serve as a bulk storage container).

What secondary containment requirements continue to apply?

General secondary containment requirements in §112.7(c) still apply to mobile refuelers at SPCC-regulated facilities.

General secondary containment should be designed to address the most likely discharge from the container and from oil transfers into or from the mobile refueler. The general secondary containment requirements:

- Do not prescribe a size for a secondary containment structure but require that the containment system prevent the spilled oil from escaping the system prior to clean up occurring
- Require appropriate containment and/or diversionary structures or equipment to prevent a discharge to navigable waters or adjoining shorelines
- Allow for the use of certain types of active containment measures that prevent a discharge to navigable waters or adjoining shorelines

When could active containment measures be appropriate?

Active containment measures require deployment or other specific action by the owner or operator. For discharges that occur only during manned activities, such as transfers, an active measure may be appropriate, as long as the measure can contain the volume and rate of oil, is properly constructed, and is deployed in a timely manner.

These active measures could also be applied to other situations, as deemed appropriate by a Professional Engineer (see [http://www.epa.gov/emergencies/content/press_releases/dec06.htm](#) for more information on the requirements for a qualified facility).

Do sized secondary containment requirements still apply to other mobile or portable bulk storage containers?

Yes. When mobile or portable bulk storage containers (such as drums, skids, railcars, and totes) are in a stationary, unattended mode and not under the direct oversight or control of facility personnel, the sized secondary requirements apply. When mobile or portable bulk storage containers (other than mobile refuelers) are involved in on-site movement, e.g., being towed by vehicles (including locomotives) or moved to/from a designated operational area, then the general secondary containment requirements apply.

When is a mobile refueler subject to SPCC requirements?

According to a 1971 Memorandum of Understanding between the Department of Transportation (DOT) and the Environmental Protection Agency, EPA regulates non-transportation-related facilities and DOT regulates transportation-related facilities:

- Mobile refuelers that operate solely within the confines of a non-transportation-related facility subject to the SPCC rule must comply with the general secondary containment requirements during all periods of operation.
- Other mobile refuelers (i.e., transportation-related) involved in a transfer operation at an SPCC-regulated facility would be subject to the loading/unloading rack requirements when the transfer occurs at a rack or the general secondary containment requirements for all other transfers.

For more information on EPA's jurisdiction, please see Appendix A to 40 CFR part 112.

For More Information

Read the SPCC rule amendment

[SPCC Main Page](#)

Review the Oil Pollution Prevention regulation (40 CFR part 112)

<http://www.ecfr.gov/>

Visit the EPA Office of Emergency Management Web site

<http://www.epa.gov/emergencies>

Call the Superfund, TRI, EPCRA, RMP, and Oil Information Center

(800) 424-9346 or (703) 412-9810

TDD (800) 553-7672 or (703) 412-3323

<http://www.epa.gov/superfund/contacts/infocenter>

To Report an Oil or Chemical Spill

Call the National Response Center

(800) 424-8802 or (202) 267-2675

TDD (202) 267-4477

Last updated on Monday, February 03, 2014

Melissa Young, Esq.
Government Affairs Counsel
Petroleum Marketers Association of America
1901 N. Fort Meyer Drive
Suite 1200
Arlington, Virginia 22209-1604

Dear Ms. Young:

Thank you for your letter to Administrator Whitman of February 5, 2001, which she has referred to me for an answer.

You explained that a marketer was notified by an Environmental Protection Agency (EPA) inspector that her facility, which is below the 42,000 gallon underground storage tank threshold capacity, would need a Spill Prevention, Control, and Countermeasure (SPCC) Plan, because she parks her 2,500 gallon cargo tank motor vehicle at the facility in the evenings. You noted that it is used to deliver petroleum products in commerce, not as a mobile fueling facility and that it is emptied before it is parked for the evening.

EPA presumes that a cargo tank motor vehicle that contains no oil, other than any residual oil present in an emptied vehicle when it is parked at the facility in the evening, is a highway vehicle used for the transport of oil in interstate or intrastate commerce, and is therefore transportation-related, and not subject to SPCC jurisdiction. 40 CFR 112, Appendix A, Section II(2)(D). You should be aware, however, if the vehicle were to be used at any time in a fixed operating non-transportation mode, such as the storage or transfer of oil in any amount, other than any residual oil present in an emptied vehicle at the end of the day, then it would become subject to the SPCC rule if there were a reasonable possibility of discharge from the vehicle to navigable waters or adjoining shorelines. See 40 CFR 112.3(c); and 40 CFR 112, Appendix A, Section II(1)(F).

To determine if a fixed operating non-transportation mode has begun, and therefore EPA SPCC jurisdiction arises, an EPA inspector would will look at all the circumstances at a particular facility. Here, such circumstances might include whether the vehicle is functioning as a storage tank, supplementing storage capacity or transferring oil at the facility. We believe the vehicle you described is operating in a transportation-related

mode, and therefore, no EPA SPCC regulatory jurisdiction arises. We note that if the vehicle itself were to be subject to the SPCC rule, it exceeds the SPCC regulatory threshold regardless of any other storage or use of oil at the facility. We also note that if it is used for the transport of oil exclusively within the confines of a facility and is not intended to transport oil in interstate or intrastate commerce, it may be subject to the SPCC rule. 40 CFR 112, Appendix A, Section II(1)(J).

Again, thank you for your letter. Please do not hesitate to contact us again if you have other questions concerning EPA's oil program. If you have any questions about this letter, please contact Hugo Fleischman at 703-603-8769 or Mark Howard at 703-603-8715.

Sincerely,

Stephen F. Heare, Acting Deputy Director,
Office of Emergency and Remedial Response

cc: Clifford J. Harvison, NTTC
James Malcolm, MC 2131
Susan Gorsky, DOT